IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

SPECIAL CIVIL APPLICATION No. 4593 of 2000

For Approval and Signature:

Hon'ble MISS JUSTICE R.M. DOSHIT

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1. Whether Reporters of Local Papers may be allowed to see the judgements? : NO

2. To be referred to the Reporter or not? : NO

3. Whether Their Lordships wish to see the fair copy of the judgement? : NO

4. Whether this case involves a substantial question of law as to the interpretation of the Constitution of India, 1950 of any Order made thereunder? : NO

5. Whether it is to be circulated to the Civil Judge? : NO

MANEKLAL LALLUBHAI PATEL

Versus

STATE OF GUJARAT

Appearance:

MR SH SANJANWALA with
MR RS SANJANWALA for Petitioner No. 1
MS KATHA GAJJAR AGP for Respondents No. 1-2
Respondents No. 3-4 :: Deleted

CORAM : MISS JUSTICE R.M.DOSHIT

Date of decision: 07/02/2002

ORAL JUDGEMENT

Heard the learned advocates.

The petitioner before this Court is the purchaser of the lands bearing Block No. 79, admeasuring 12 acres-32 gunthas and Block No. 81, admeasuring 14 acres-3 gunthas of village Tajpur, Taluka-Sanand, District-Ahmedabad from the former owners. It appears that the lands bearing Block Nos. 76, 79 & 81 of village Tajpur of Sanand Taluka belonged to a partnership firm. Pursuant to the partition deed, the said lands were divided amongst the partners. Revenue entry no. 973 recording the said partition was made in the village records on 30th August, 1985. Since then, the petitioner has purchased the above referred lands - Block Nos. 79 and 81 on 27th November, 1992. The said transfer has been recorded by revenue entries nos. 1103 & 1104. It appears that the aforesaid partition of the lands recorded under revenue entry no. 973 had been made in contravention of section 31 of the Bombay Prevention of Fragmentation & Consolidation of Holdings Act, 1947. The said entry was, therefore, taken into revision by the Deputy Collector, Dholka in case no. SR-33 of 1991. The Deputy Collector, under his order dated 20th December, 1996 set-aside the said entry no. 973 and also the subsequent entries that may have been made. Feeling aggrieved, the petitioner preferred Revision Application No. 18 of 1997 before the State Government. The State Government [Principal Secretary, Revenue Department (Appeals)] has, under its order dated 21st February, 2000 dismissed the said Revision Application. Feeling aggrieved, the petitioner has preferred the present petition.

Mr. Sanjanwala has submitted that the petitioner does not challenge the impugned orders in so far as the revenue entry no. 973 is concerned. However, he states that under the impugned orders all subsequent revenue entries are also ordered to be cancelled i.e., the revenue entries nos. 1103 and 1104 recording transfer in favour of the petitioner also stand cancelled without giving opportunity of hearing or to show-cause to the petitioner. The impugned orders thus are made in violation of the principles of natural justice and are required to be quashed and set-aside. He has further stated that in so far as the partition of the lands and the revenue entry no.973 are concerned, the petitioner may apply for ex post facto permission under section 31 of the Act.

It is not disputed that no notice to show cause

or an opportunity of hearing was given to the petitioners though they had purchased the lands in question long before the revenue entry no. 973 was taken into revision by the Deputy Collector, Dholka Prant. In that view of the matter and in view of the statement made by Mr. Sanjanwala, the petition is partly allowed. The impugned order dated 21st February, 2000 made by the State Government is set-aside in so far as it affects the revenue entries nos. 1103 and 1104 made in respect of the transfer in favour of the petitioner herein. If any action is required to be taken in respect of the said entries nos. 1103 and 1104, no action shall be taken without affording an opportunity of showing cause and of hearing to the present petitioner. Rule is made absolute to the above extent. It is clarified that the petitioner shall be at liberty to apply for ex post facto permission with respect to the partition recorded under the revenue entry no. 973, if otherwise permissible. The parties shall bear their own costs.

{Ms. R.M Doshit, J.}

Prakash*